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No. _____

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In the Supreme Court of the United States

October Term, 1989

BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY and DEAN JOHN B. STEPHENSON .. CROSS-PETITIONERS

versus

DR. JOSEPH MURRAY HAYSE .. CROSS-RESPONDENT

CROSS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

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QUESTIONS PRESENTED FOR REVIEW

1. Can a state's traditional common law sovereign immunity, which would otherwise completely bar U.S.C. §1983 suits or direct constitutional claims against the state in its own courts be waived or lost through procedural default during litigation?

2. Since Kentucky has not formally waived its traditional common law sovereign immunity from 42 U.S.C. §1983 or direct constitutional claims, did the Supreme Court of Kentucky err in ruling that prospective injunctive relief is authorized against the state itself?

3. If a state official acts within the scope of his employment, can he be personally liable for monetary damages to a plaintiff who prevails in a 42 U.S.C. §1983 suit against him?

4. If 42 U.S.C. §1983 claims are defectively plead initially as direct constitutional claims, is the statute of limitations for 42 U.S.C. §1983 claims nevertheless tolled by the initial defective pleading?

5. In holding that the limitations period for 42 U.S.C. §1983 does not begin to run at the time of a university professor's terminal reappointment, did the Supreme Court of Kentucky misinterpret *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980)?

PARTIES

The parties below were Dr. Joseph Murray Hayse, the Board of Trustees of the University of Kentucky and Dean John B. Stephenson.

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OPINIONS BELOW

The Opinion of the Supreme Court of Kentucky is reported at 782 S.W.2d 609 (1989) and is reproduced in the Appendix to Docket No. 89-1741.

The Opinion of the Kentucky Court of Appeals rendered December 11, 1989, modified April 1, 1989 is unreported and is reproduced in the Appendix to Docket No. 89-1741.

The Opinion of the Kentucky Court of Appeals rendered February 26, 1982 is unreported and is reproduced in the Appendix to Docket No. 89-1741.

The Opinions of the Franklin Circuit Court, dated May 27, 1981; March 19, 1986; and July 3, 1986, respectively, are unreported and are reproduced in the Appendix to Docket No. 88-1741.

JURISDICTION

The Supreme Court of Kentucky, a state court of last resort, has rendered a published decision in this case regarding the rights of a petitioner under 42 U.S.C. §1983. This decision conflicts with the decisions of other state courts of last resort, of federal Courts of Appeals, and of this Court.

The Supreme Court of Kentucky issued its Opinion in this case on November 9, 1989. Its Order Denying the Parties' Petitions For Rehearing was entered February 8, 1990. Dr. Joseph Murray Hayse filed a Petition For Writ of Certiorari to the Kentucky Supreme Court on May 8, 1990, within ninety days after the entry of the Order Denying the parties' Petitions For Rehearing. This Cross-Petition is filed pursuant to United States Supreme Court Rule 12.3, within thirty days after receipt of Dr. Hayse's petition on May 8, 1990.

This Court has jurisdiction to review the Opinion of the Supreme Court of Kentucky, pursuant to 28 U.S.C. §1257.

FEDERAL STATUTE

This case involves 42 U.S.C. §1983 which states:

> Every person who, under color of any statute, ordinance, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATE CONSTITUTIONAL PROVISION

KENTUCKY CONSTITUTION SECTION 231

The General Assembly may, by law, direct in what manner and in what court suits may be brought against the Commonwealth.

STATE STATUTES

This case also touches upon KRS 164.225 and KRS 413.140(1)(a), which state, respectively, as follows:

KRS 164.225

Anything in any statutes of the Commonwealth to the contrary notwithstanding, the power over and control of appointments, qualifications, salaries and compensation, payable out of the state treasury or otherwise, promotions and official relations of all employees of the University of Kentucky as provided in KRS 164.220, and, subject to any restrictions

STATE STATUTES (Continued)

KRS 164.225 (Continued)

imposed by general law, the retirement ages and benefits of such employees shall be under the exclusive jurisdiction of the Board of Trustees of the University of Kentucky which shall be an independent agency and instrumentality of the Commonwealth.

KRS 413.140(1)(a)

The following actions shall be commenced within one (1) year after the cause of action accrued: (a) an action for an injury to the person of the plaintiff or of his wife, child, ward, apprentice or servant.

has never personally reviewed the files of faculty members not recommended for tenure, and does not do so now. According to the University's governing regulations:

> The dean . . . shall be responsible for . . . terminal appointments . . . or for ultimate action thereon when such authority has been delegated by the vice-president to whom the dean reports or by the president.

At trial, testimony was uncontroverted that the university's president had long ago delegated to the deans the authority to hire and terminate non-tenured professors. If a dean recommends against tenure a candidate's file is considered no further. Following this procedure, Dr. Evans sent Hayse's file to Dean Stephenson in 1977, recommending tenure. Dean Stephenson disapproved the recommendation. Hayse accepted a one-year terminal reappointment in February, 1977. According to the minutes of the University's Board of Trustees, the Board of Trustees ratified Hayse's terminal reappointment on May 3, 1977. In addition to Hayse, fourteen other faculty members received terminal reappointments for the 1977-78 academic year, as recommended by the president and ratified by the Board without discussion and without review of the candidates' files.

In February, 1978 Hayse appealed his terminal reappointment. Dean Stephenson voluntarily appointed a three person *ad hoc* committee to assist him in considering Hayse's situation. Dr. Lewis Swift,

Professor of Classical Languages at the University served on the *ad hoc* committee. He recalled at trial that after he and his fellow committee members had reviewed Hayse's file they recommended against tenure because of Hayse's poor publication record, which did not inspire confidence in his future performance as a scholar.

Hayse continued to protest. Dean Stephenson, bending regulations, agreed to forward Hayse's file to Vice-President Cochran and to an area advisory committee for review. Ultimately, all of those persons recommended against tenure. Of the fifteen professors who reviewed Hayse's file, fourteen concluded that he did not merit tenure, primarily because he had not published scholarly works. Dr. Evans, the departmental chairman, was Hayse's sole supporter.

In March, 1979 Hayse sued the University and Dean Stephenson, pleading breach of contract pursuant to a Kentucky statute that specifically allows state employees to bring contract claims against the state. By March, 1981, all parties had moved for summary judgment on the contract claims. On May 18, 1981, Hayse filed his First Amended Complaint, in which he claimed that the University and Dean Stephenson had violated his rights under the First, Fifth and Fourteenth Amendments of the United States Constitution. Specifically, he claimed that he was denied tenure because of an alleged feud between Dean Stephenson and Dr. Evans about how the honors

program should be run. On May 27, 1981 the Circuit Court granted the University's Motion For Summary Judgment on Hayse's contract claim, none of the parties having moved for summary judgment on the constitutional claims. Hayse appealed. The Court of Appeals reversed the summary judgment but failed entirely to address the contract claim upon which it was based, instead remanding the case for findings of fact on the constitutional issues. No §1983 issues were addressed on the first appeal, since Hayse never mentioned §1983 until four years later, in 1985.

On March 18, 1985 Hayse filed a Second Amended Complaint in which he expressly replead his constitutional claims, then added §1983 claims. The University and Dean Stephenson asserted in their answer that Hayse's §1983 claims were time-barred, and that they were barred by sovereign immunity.

Hayse's constitutional and federal statutory claims were tried before a jury in March, 1986. The contract claim was not tried at that time, because the Kentucky statute that enables such claims to be brought precludes jury trials of such claims. The jury awarded Hayse $61,760.00 in damages. The trial court initially improved upon this verdict by entering an order promoting Hayse to the tenured position he originally sought. On June 3, 1986 the trial court entered a final order dismissing Hayse's constitutional and federal statutory claims as time-barred, sustaining the defendant's motion for judgment not withstanding verdict

because the evidence had failed to support any finding that impermissible factors motivated the University to deny Hayse's tenure application while the unrebutted proof showed that Hayse would not have gotten tenure anyway, vacating its earlier order reinstating Hayse with tenure, and conditionally sustaining the University's motion for a new trial.

Hayse appealed. In its December 11, 1987 Opinion the Kentucky Court of Appeals held that the trial court had improperly granted judgment notwithstanding verdict on the basis of insufficient evidence; that Hayse's §1983 claims were not time-barred; that reinstatement with tenure was an appropriate remedy; but that sovereign immunity shielded the University and Dean Stephenson from monetary damages.

In a 4 to 3 decision rendered November 9, 1989 the Supreme Court of Kentucky held that Hayse's constitutional and federal statutory claims were not time-barred; that the University and Dean Stephenson had waived sovereign immunity to Hayse's §1983 claims by failing to raise sovereign immunity as an issue during the 1981 appeal of the trial court's summary judgment on Hayse's contract claim;[1] that even if the sovereign immunity defense had not been foreclosed by

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[1]The court arrived at this result even though the University raised sovereign immunity as a defense to every complaint Hayse filed, including the Second Amended Complaint filed in 1985, four years *after* the first appeal, in which Hayse first asserted his §1983 claims.

the first appeal, it did not apply to Dean Stephenson because his wrongdoing had been personal rather than official; and that while Hayse was not entitled to automatic reinstatement with tenure, he was entitled to have his application for tenure considered anew by the Board of Trustees itself. Three members of the Court, in strong dissent, reasoned that since Kentucky's sovereign immunity goes to subject matter jurisdiction, it cannot be waived or lost through procedural defect; that since Dean Stephenson was sued only in his official capacity, an award of monetary damages against him was improper; and that Hayse, who had gotten his Ph.D. four years late and published no scholarly works during his seven-year career at the University, would not have gotten tenure anyway.

The University and Dean Stephenson preserved the statute of limitations question for review by raising it as an affirmative defense to Hayse's §1983 claims when he plead them in 1985. The University and Dean Stephenson plead sovereign immunity in their Motion to Dismiss, which was their first responsive pleading in this case, and in their Answer. They reiterated this defense in both their answer to Hayse's amended complaint in 1981, in which he plead his constitutional claims for the first time, and in their Answer to his Amended Complaint in 1985, in which he plead his §1983 claims for the first time. Both defenses were raised again in briefs to both the Court of Appeals of Kentucky and the Supreme Court of Kentucky.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW THAT COMMON LAW SOVEREIGN IMMUNITY DOES NOT GO TO SUBJECT MATTER JURISDICTION RAISES IMPORTANT AND UNRESOLVED QUESTIONS.

This Court has never resolved the question of what effect §1983 has upon a state's immunity from suit in its own courts. However, this Court has often recognized that §1983 does not override the traditional common law immunities existing at the time of its adoption. *Imbler* v. *Pachtman,* 424 U.S. 409 (1976); *Tenney* v. *Brandhove,* 341 U.S. 367 (1951). Even *Quern* v. *Jordan,* 440 U.S. 332 (1979) does not definitively settle the question of whether traditional sovereign immunity can be a complete bar to §1983 suits against a state in its own courts, since the *Quern* decision rested in part on a state's Eleventh Amendment immunity in federal court. Lower courts need this Court's guidance on this point.

Kentucky's posture with regard to §1983 suits is typical. Section 231 of the Kentucky Constitution gives the state absolute immunity from all suits except those to which the state, through an act of the General Assembly, has consented.[2] Section 231 says:

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[2]Kentucky's Constitution has always provided for the state's immunity against suits except as authorized by the General Assembly. The current provision in Kentucky's fourth Constitution is identical to the provision contained in Article VIII, Section 6 of Kentucky's third Constitution which was adopted on June 11, 1850. Thus, Kentucky's assertion of its traditional common law sovereign immunity had long been codified in its Constitution at the time §1983 was adopted in 1871.

> The General Assembly may, by law, direct in what manner and in what court suits may be brought against the Commonwealth.

In KRS 164.225, the General Assembly of Kentucky has decreed that the Board of Trustees of the University of Kentucky is "an independent agency and instrumentality of the commonwealth." Because the University's Board of Trustees is a statutorily created agency of the state it has the same immunity as the state. Until now, Kentucky's courts have consistently upheld this position. *Martin* v. *University of Louisville*, 541 F.2d 1171 (6th Cir. 1976); *Dunlap* v. *University of Kentucky*, 716 S.W.2d 219 (Ky. 1976); *Rooks* v. *University of Louisville*, 574 S.W.2d 923 (Ky. App. 1978); *University of Louisville* v. *Martin*, 574 S.W.2d 676 (Ky. App. 1978).

This Court has long recognized each state's right to exercise its traditional sovereign immunity against all causes of action. *Palmer* v. *Ohio*, 248 U.S. 32 (1918); *Hopkins* v. *Clemson College*, 221 U.S. 636 (1911). In *Quern* v. *Jordan*, 440 U.S. 332 (1979), this Court confirmed that in enacting 42 U.S.C. §1983. Congress did not intend to override the states' traditional common law sovereign immunity.[3]

Before its decision in this case, the Supreme Court of Kentucky had never directly considered whether traditional sovereign immunity bars §1983 suits

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[3]For purposes of immunities, direct constitutional claims are indistinguishable from those brought through Section 1983. *Butz* v. *Economou*, 438 U.S. 478 (1978).

against the state in its own courts. However, in *Fetterman* v. *University of Connecticut*, 473 A.2d 1176 (Conn. 1984), *Kapil* v. *Association of Pennsylvania State College and University Faculties*, 448 A.2d 717 (Pa. 1982), and *Kristensen* v. *Strinden*, 343 N.W.2d 67 (N.D. 1983), the highest courts of Connecticut, Pennsylvania, and North Dakota, respectively, determined that those states' traditional sovereign immunity protected them from §1983 actions brought in their own courts.[4] The *Kristensen* court pointed out that since no §1983 claims may be brought against a state in federal court because of Eleventh Amendment immunity, then none ought to be brought in state court either. The court reasoned that to hold otherwise would be to condone forum shopping, because a plaintiff could force a state court to entertain federal statutory claims against the state that the federal courts themselves would not entertain.

In this case, the Supreme Court of Kentucky skirted the entire problem of sovereign immunity, basing its decision upon the erroneous premise that the University and Dean Stephenson had waived sovereign immunity as a defense by not raising it during the 1981

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[4]The Supreme Court of Pennsylvania later reversed the *Kapil* decision, not because the lower court's reasoning was wrong, but because the cause of action had arisen after Pennsylvania's courts had abrogated the doctrine of sovereign immunity, but before the Pennsylvania legislature had reinstated it. *See, Kapil* v. *Association of Pennsylvania State Colleges*, 470 A.2d 482 (Pa. 1983). Section 231 of the Kentucky Constitution makes decisions regarding the state's sovereign immunity the exclusive province of the legislature.

appeal of the trial court's summary judgment on Hayse's contract claim. This premise cannot be correct, since sovereign immunity is not merely a limitation upon the remedies which may be awarded against a state, but rather, is a limitation upon the very suit itself. Sovereign immunity presents the court with an "all or nothing" proposition. If a defendant has sovereign immunity then there can be no suit because the courts are without jurisdiction to hear it. Because sovereign immunity goes to subject matter jurisdiction, it can never be waived by the acts or omissions of the parties during litigation. Almost every court in this country has at one time accepted and articulated the proposition that sovereign immunity, as a jurisdictional defense, may be raised at any time, even on appeal, and even by the Supreme Court itself. *E.g.*, *Edelman* v. *Jordan*, 415 U.S. 651, 677-78 (1974); *Alabama* v. *Pugh*, 438 U.S. 781, 782 n.1 (1978); *Reeves* v. *International Telephone and Telegraph Corp.*, 616 F.2d 1342, 1339 n.8 (5th Cir. 1980); *Jakobsen* v. *Massachusetts Port Authority*, 520 F.2d 810, 813 n.3 (1st Cir. 1975); *Wells* v. *Commonwealth Department of Highways*, 384 S.W.2d 308 (Ky. 1974). The Supreme Court of Kentucky's decision, however, flies in the face of this rule and defies logic in doing so.

THE DECISION BELOW THAT PROSPECTIVE INJUNCTIVE RELIEF IN A §1983 CASE IS AVAILABLE AGAINST THE STATE ITSELF CONFLICTS WITH THE DECISIONS OF FEDERAL COURTS OF APPEALS.

In §1983 suits, prospective injunctive relief is available only against state officials in their official capacities. However, the "prospective injunctive relief" that the Supreme Court of Kentucky has awarded to Hayse was not awarded against Dean Stephenson, much less against Dean Stephenson in his former official capacity, or against any other state official, but rather against the University itself. This is tantamount to awarding relief against the state itself.[5] In its decision, the Supreme Court of Kentucky orders the trial court to "enjoin the University of Kentucky Board of Trustees to consider Dr. Hayse's application as stated above, under the rules and regulations pertaining thereto at the time tenure was denied him."

That Dr. Hayse's 1977 application for tenure was treated in exactly the same way as that of every other similarly situated professor in the history of the University has never been disputed, Now, however, for Hayse alone, the University of Kentucky's Board of Trustees must personally consider Hayse's complete

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[5]Even if the Supreme Court of Kentucky had ordered such relief against former Dean Stephenson, Stephenson would be powerless to comply since he has been president of Berea College, a private institution, for several years and is no longer a state official. He therefore cannot possibly be engaged in any ongoing conduct that the courts can enjoin in this suit.

dossier. This will be an extraordinary event since the Board of Trustees does not personally review the dossier of anyone not recommended for tenure. It has never done so. The University's regulations have never required it to do so and do not require it to do so now. The remedy the Supreme Court of Kentucky has fashioned is not only improper under §1983, but requires the Board of Trustees to commit a procedural irregularity. To have the Board of Trustees review a candidate's actual file is ironic, too, since the Board members are administrators, not academicians. Like courts, they lack experience in making substantive evaluations of candidates for tenure.

Because the University is immune from all of Hayse's federal and statutory claims, it necessarily follows that the University is immune from any remedy that might be imposed upon the basis of those claims. The Supreme Court of Kentucky's directive regarding the University of Kentucky's Board of Trustees is therefore improper. Moreover, it requires the Board of Trustees to do something that has already been done. There is no record in the evidence of this case or anywhere else to show that in either 1977 or 1978 the University treated Hayse's application for tenure differently than it had ever treated anyone else's, except that in 1978 Dean Stephenson voluntarily asked for advice from his colleagues on this subject. Hayse presented no evidence to show that under the University's regulations President Singletary lacked the authority to delegate to the deans the responsibility for

hiring and terminating non-tenured faculty members. In fact the University's relevant governing regulation states that the president has such authority. Hayse presented no evidence to show that the file of any person not recommended for tenure has ever gone past the appropriate dean. He presented no evidence to show that the Board of Trustees ever reviews the files of non-tenured professors whose employment is about to be terminated. Moreover, Hayse's own counsel stipulated to the authenticity of the minutes for the May 20, 1977 meeting of the Board of Trustees which show that the Board ratified the Dean's recommendations of various faculty members for tenure and various others, including Hayse, for termination. In short, the parties had agreed that the Board of Trustees has already reviewed and rejected Hayse's application for tenure. The Board of Trustees may not be judicially required, pursuant to §1983, to review Hayse's application again.

In addition to creating an anomaly and a redundancy in the University's procedures the Supreme Court of Kentucky's decision conflicts with decisions of at least two United States Courts of Appeals. In *Kashani* v. *Purdue University*, 813 F.2d 843 (7th Cir. 1983), *cert. denied*, 484 U.S. 846 (1987) an Iranian student terminated from Purdue's doctoral program during the hostage crisis sued Purdue, its trustees, its president and various faculty members, seeking both monetary damages and reinstatement. The court in *Kashani* held that prospective injunctive relief was not available

against the university or against its Board of Trustees, but only against the university's officials in their official capacities.

Similarly, in *Lee* v. *Western Reserve Psychiatric Rehabilitation Center*, 747 F.2d 1062 (6th Cir. 1984) a discharged hospital employee sued for damages and reinstatement. The United States Court of Appeals for the Sixth Circuit affirmed the district court's dismissal of his Complaint for failure to state a proper claim under §1983. The court noted in dictum that the plaintiff's request to enjoin the defendants from adhering to their present discharge procedures in the future would theoretically have fallen within the narrow exception to the sovereign immunity doctrine only because the plaintiff had alleged that one of the defendants, a state official, was engaged in ongoing conduct that violated the constitution. The case at bar cannot possibly fall within this narrow exception to the sovereign immunity doctrine because it does not involve state officials engaging in ongoing conduct of any kind.

A STATE OFFICIAL ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT IS NOT PERSONALLY LIABLE FOR DAMAGES IN §1983 SUITS.

Hayse styled all of his complaints in this suit against *Dean* John B. Stephenson, never attempting to articulate a claim against Dean Stephenson other than in his official capacity. He neither plead nor attempted to prove that Dean Stephenson was acting

outside the scope of his duties and is therefore foreclosed from making that argument now. Even if Hayse had sued Dean Stephenson in both his official and his personal capacities, the Supreme Court of Kentucky's decision to award damages against Dean Stephenson would be erroneous. Damages may be awarded against a state official in his official capacity only if they would be available against the governmental entity for which that defendant is an executive. *Familias Unidas* v. *Briscoe,* 619 F.2d 391 (5th Cir. 1980); *See, Monell* v. *Department of Social Services For New York,* 436 U.S. 690 n.55 (1978). A private party is not personally liable for damages in a Section 1983 suit unless he is amenable to such a suit in his official capacity. *Parker* v. *Graves,* 479 F.2d 335 (5th Cir. 1973). Since no cause of action may be maintained against the University in this case, no suit for damages may be maintained against Dean Stephenson either. Moreover, a §1983 action cannot lie against a private person in his individual capacity, since a private person acting solely on his own behalf could not create the state action necessary for a §1983 suit.

THE SUPREME COURT OF KENTUCKY MISAPPLIED THE HOLDING OF *RICKS* CONCERNING THE STATUTE OF LIMITATIONS FOR HAYSE'S SECTION 1983 CLAIMS.

The parties agree and the Supreme Court of Kentucky correctly determined that in Kentucky a one-year statute of limitations applies for constitutional and federal statutory claims. *Wilson* v. *Garcia,* 471 U.S.

261 (1985); *Frisby* v. *Board of Education of Boyle County*, 707 S.W.2d 359 (Ky. App. 1986). *See*, KRS 413.140(1)(a). The Supreme Court of Kentucky also correctly concluded that the rule announced in *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980) should control in this case. However, the Supreme Court of Kentucky then erred in its interpretation of *Ricks* by overlooking the crucial point of that decision: that the offer of a terminal reappointment contract to a non-tenured university professor starts the running of the statute of limitations for §1983 purposes.

Hayse received his terminal reappointment in February, 1977. He filed suit for breach of contract in March, 1979, amended his complaint to plead direct *Bivens*-style constitutional violations in 1981, and amended again to plead §1983 in 1985.[6] The Supreme

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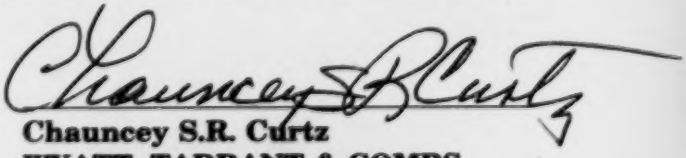
[6]When Hayse first brought suit in 1979, he based his complaint solely upon breach of contract. The running of the statute of limitations was not a legitimate defense to that claim. He plead his constitutional claims as direct *Bivens*-style claims in 1981, never mentioning §1983. In his briefs to the Supreme Court of Kentucky, he continued to insist that his direct constitutional claims were distinct from his §1983 claims. However, since §1983 provides the exclusive remedy for the kinds of constitutional claims Hayse raises, no direct action on those claims is permissible. *Thomas* v. *Shipka*, 818 F.2d 496 (6th Cir. 1987). His Amended Complaint in 1981 therefore failed to state a claim, as the University and Dean Stephenson correctly plead in their answer to the Amended Complaint. In 1985, six years after filing suit and four years after pleading his direct constitutional claims, Hayse plead §1983. The University and Dean Stephenson plead a statute of limitations defense. In point of fact, Hayse had plead no cognizable constitutional claims *until* 1985, by which time they were barred.

Court of Kentucky reasoned that because Hayse might have been rescued from termination had the University failed to confirm its original denial of tenure, the statute of limitations did not begin to run until the University made that confirmation in May, 1978. However, this directly contravenes *Ricks*. In *Ricks*, as in this case, the college took the official position that Ricks would not receive tenure but would be given a terminal reappointment. The offer of the terminal reappointment was the dispositive event. That the University had an internal method for reviewing its decision and that Hayse chose to make use of that method did not toll the running of the statute of limitations. To hold otherwise, as the Supreme Court of Kentucky did, is to create a "last day of employment rule," an approach that this Court expressly rejected in *Ricks*.

CONCLUSION

Because the decision of the Supreme Court of Kentucky regarding Hayse's rights under §1983 conflicts with the holdings of various state courts of last resort, of federal appellate courts, and of this Court, the University's cross-petition for Writ of Certiorari should be granted.



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